

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON
AT SPOKANE

ALPS PROPERTY & CASUALTY
INSURANCE COMPANY, a foreign
insurer

Plaintiff,

v.

KIRK D. MILLER, an individual, KIRK
D. MILLER, P.S., a Washington
Professional Service corporation, BRIAN
CAMERON, an individual, SHAYNE
SUTHERLAND, an individual,
CAMERON SUTHERLAND PLLC, a
Washington Professional Limited
Liability Company, ISAAC GORDON,
an individual, and ROBINHOOD
FINANCIAL LLC, a foreign Limited
Liability Company,

Defendants.

No. 2:22-cv-00064

**COMPLAINT FOR
DECLARATORY RELIEF**

Plaintiff ALPS Property & Casualty Insurance Company (hereinafter
“ALPS”) submits the following Complaint for Declaratory Relief pursuant to 28

1 U.S.C. §2201 and Fed. R. Civ. P. 57.

2 **I. PARTIES**

3 1.1 Plaintiff ALPS Property & Casualty Insurance Company is a foreign
4 insurance company organized under the laws of the State of Montana with its
5 principal place of business in the State of Montana.
6

7 1.2 Defendant Kirk D. Miller is an attorney licensed to practice law in the
8 state of Washington (WSBA #40025) and is a resident and citizen of the state of
9 Washington.
10

11 1.3 Defendant Kirk D. Miller, P.S. is a Washington Professional Service
12 Corporation with a principal place of business in the State of Washington.

13 1.4 Defendant Brian Cameron is an attorney licensed to practice law in the
14 state of Washington (WSBA #44905) and is a resident and citizen of the state of
15 Washington.

16 1.5 Defendant Shayne Sutherland is an attorney licensed to practice law in
17 the state of Washington (WSBA #44593) and is a resident and citizen of the state of
18 Washington.
19

20 1.6 Defendant Cameron Sutherland PLLC is a Washington Professional
21 Limited Liability Company with a principal place of business in the State of
22 Washington. The membership of Cameron Sutherland PLLC consists entirely of
23

1 Brian Cameron and Shayne Sutherland, both of whom are residents and citizens of
2 the state of Washington.

3 1.7 Defendant Isaac Gordon is an individual and is a resident and citizen of
4 the state of Washington.

5 1.8 Defendant Robinhood Financial LLC is a foreign Limited Liability
6 Company with a principal place of business in the State of California.
7

8 **II. JURISDICTION AND VENUE**

9 2.1 Jurisdiction is properly before this Court pursuant to 28 U.S.C. § 1332
10 et sequent, as complete diversity exists among the parties and the amount in
11 controversy exceeds \$75,000.
12

13 2.2 This Court has jurisdiction over this Declaratory Judgment action
14 pursuant to 28A U.S.C. § 2201 because there is an actual and justiciable controversy
15 between the parties with respect to the existence of insurance coverage under the
16 Policies of Insurance issued by ALPS. A judicial determination and declaration of
17 the rights and obligations of the parties is necessary and appropriate at this time
18 because ALPS has no adequate remedy allowed to resolve the current controversy.
19

20 2.3 Venue is proper in this Court pursuant to 28 U.S.C. § 1391 as this action
21 involves a dispute over the application of insurance coverage under policies written
22 out of Washington, events and omissions which give rise to this claim occurred in
23

1 this district, and because all of the Defendants are subject to this Court for personal
2 jurisdiction.

3 4 **III. FACTS**

5 **A. The Underlying Matter**

6 3.1 ALPS issued a Lawyers Professional Liability Policy of Insurance to
7 Cameron Sutherland PLLC, policy number ALPS22052-3 (hereinafter the
8 “Cameron Sutherland Policy”). The Cameron Sutherland Policy was in effect from
9 August 30, 2020, to August 30, 2021.

10 3.2 The Cameron Sutherland Policy provides a \$100,000 each claim limit
11 and a \$300,000 general aggregate limit.

12 3.3 ALPS issued a BASIC Lawyers Professional Liability Policy of
13 Insurance to Kirk D. Miller, P.S., policy number ALPS24677-2 (hereinafter the
14 “Miller Policy”). The Miller Policy was in effect from June 1, 2021, to June 1, 2022.

15 3.4 The Miller Policy provides a \$500,000 each claim limit and a \$500,000
16 general aggregate limit.

17 3.5 On or about October 29, 2019, Defendant Isaac Gordon (hereinafter
18 “Gordon”) filed a putative class-action lawsuit against Defendant Robinhood
19 Financial LLC (hereinafter “Robinhood”) entitled *Isaac Gordon v. Robinhood*
20 *Financial LLC*, Case No. 19-2-04574-32 (hereinafter the “Underlying Lawsuit”) in
21
22
23

1 the Superior Court of Washington of Spokane County.

2 3.6 The gravamen of the Underlying Lawsuit was that Gordon alleged that
3 Robinhood had transmitted or assisted in the transmission of unsolicited text
4 messages to him, and presumptively to a broader class of individuals, in violation of
5 the Washington Commercial Electronic Mail Act (hereinafter the “CEMA”).
6

7 3.7 To represent him in the Underlying Lawsuit, Gordon hired Defendant
8 law firm Cameron Sutherland PLLC (hereinafter “Cameron Sutherland”), consisting
9 of Defendants Brian Cameron (hereinafter “Cameron”) and Shayne Sutherland
10 (hereinafter “Sutherland”), as well as Defendant law firm Kirk D. Miller P.S.
11 (hereinafter “Miller P.S”), consisting of Defendant attorney Kirk Miller (hereinafter
12 “Miller”).
13

14 3.8 After protracted and extensive discovery lasting over 18 months,
15 Robinhood’s counsel allegedly discovered that the source of the text messages to
16 Gordon which allegedly violated the CEMA were the result of “referral codes” sent
17 to Gordon’s phone by phones which were allegedly traced to Cameron’s brother and
18 the friend of Cameron’s son.
19

20 3.9 In addition, Gordon also allegedly admitted during discovery that he
21 had a prior affiliation with Cameron and his family, that he was close personal
22 friends with Cameron’s brother, and that Cameron’s brother had allegedly sent the
23

1 Robinhood referral text directly to Mr. Gordon's phone.

2 3.10 Further, Robinhood also discovered during this period that Cameron
3 Sutherland and Miller P.S. allegedly had a history of filing similar claims to the one
4 advanced here, using friends and acquaintances to allegedly contrive to manufacture
5 or "set up" purported CEMA violations for the purpose of subsequently filing suits
6 against various businesses, all of which allegedly resulted in voluntary dismissals by
7 the claimant parties once their allegedly fraudulent activity came to light.
8

9 3.11 On May 18, 2021, Cameron Sutherland submitted a Notice of New
10 Claim or Potential Claim to ALPS on the basis of allegations made by Robinhood in
11 the Underlying Lawsuit that Cameron "set up" the claim in dispute.
12

13 3.12 As a result of these alleged discoveries and the resulting impression that
14 Cameron and Gordon had allegedly conspired to fraudulently contrive Gordon's
15 CEMA claims against Robinhood, the District Court decertified the class action and
16 remanded the case to Spokane County Superior Court on July 27, 2021.
17

18 3.13 On October 8, 2021, the Spokane County Superior Court dismissed
19 Gordon's case with prejudice and ruled that the entire basis for the initial claim was
20 frivolous.

21 3.14 On October 18, 2021, Robinhood filed a Motion for Attorney's Fees in
22 the Underlying Lawsuit, as well as for Civil Rule 11 sanctions to be imposed on
23

1 Miller, Miller P.S., Cameron, and Cameron Sutherland in the amount of their fees
2 incurred in defending the case on the basis that attorney's fees may be awarded to a
3 prevailing defendant as a matter of right under RCW 4.84.250 in cases where the
4 amount in dispute was \$10,000.00 or less, that attorney's fees may be awarded to a
5 prevailing defendant as a matter of right under RCW 4.84.185 in an action that was
6 frivolous or advanced without reasonable cause, and that Washington Civil Rule 11
7 allowed for the imposition of sanctions upon parties and counsel which may take the
8 form of attorney's fees, where parties or counsel sign a pleading, motion, or
9 memorandum that is not well grounded in fact or law, or is advanced for an improper
10 purpose.
11

12
13 3.15 Robinhood concurrently filed a Memorandum in Support of
14 Defendant's Motion for Attorney's Fees, wherein Robinhood summarized its factual
15 findings during the Underlying Lawsuit and arguments for attorney's fees and
16 sanctions against Miller individually, Cameron individually, Miller P.S, and
17 Cameron Sutherland.

18
19 3.16 On October 26, 2021, Miller P.S. submitted a Notice of New Claim or
20 Potential Claim to ALPS on the basis of the allegations in the Robinhood Motion for
21 Attorney's Fees.

22 3.17 On October 28, 2021, Cameron Sutherland submitted a Notice of New
23

1 Claim or Potential Claim to ALPS on the basis of the allegations in the Robinhood
2 Motion for Attorney's Fees.

3 **B. The Miller Policy**

4 3.18 The Miller Policy contains the following Insuring Agreement:

5 SECTION 1 – INSURING AGREEMENTS

6 A. COVERAGE

7
8 Subject to the Limit of Liability, exclusions, conditions
9 and other terms of this Policy, the Company agrees to pay
10 on behalf of the Insured all sums (in excess of the
11 Deductible amount) that the Insured becomes legally
12 obligated to pay as Damages, arising from or in
13 connection with A CLAIM FIRST MADE AGAINST
14 THE INSURED AND FIRST REPORTED IN
15 WRITING TO THE COMPANY DURING THE
16 POLICY PERIOD, provided that all of the following
17 conditions are satisfied:

- 18 1. The Claim arises from a Wrongful Act that occurred
19 on or after the Retroactive Coverage Date set forth in
20 Item 2 of the Declarations;
- 21 2. At the Effective Date of this Policy, no Insured knew
22 or reasonably should have known or foreseen that the
23 Wrongful Act might be the basis of a Claim;
- 24 3. Notice of the Claim or the Wrongful Act was not given
nor required to be given to any other insurer prior to
the Effective Date; and
4. The Claim is not otherwise covered under any other
insurance policy that the Company has issued to the
Named Insured.

1
2 3.19 The Miller Policy contains the following Definitions pertinent to the
3 above-described Insuring Agreement:

4 **Claim** means a demand for money or services including,
5 but not necessarily limited to, the service of suit or
6 institution of arbitration or alternative dispute resolution
proceedings against the **Insured**.

7 **Claim** does *not* mean *nor* include any demand, service or
8 proceeding arising from or in connection with any actual
or alleged:

9 ...

10 3. Employment-related matter involving an **Insured** as
an employer;

11 ...

12 7. Notice or written demand arising from or in
13 connection with any disciplinary, investigatory or
14 other proceeding before a state licensing board, peer
review committee or governmental regulatory body
involving an **Insured Attorney**;

15 **G. Damages** means any:

16 1. Monetary award by way of judgment or final
17 arbitration, or any settlement; and

18 ...

19 **Damages** does *not* mean *nor* include any:

20 3. Punitive, multiple, or exemplary damages, fines,
21 sanctions, penalties or citations, including, without
22 limitation, any consequential or incidental damages,
attorney's fees or costs, or pre-judgment or post-
23 judgment interest resulting therefrom, regardless
24 against whom the same are levied or imposed and

1 regardless of whether the same were levied or imposed
2 in a separate matter or proceeding;

- 3 4. Awards deemed uninsurable by law;
- 4 5. Injunctive, declaratory, or other equitable relief, or
5 costs or fees incident thereto;
- 6 6. Restitution, reduction, disgorgement or set-off of any
7 fees, costs, consideration or expenses paid to, awarded
8 to, charged by, or received by an **Insured**, or any other
9 funds or property of any person or entity presently or
10 formerly held or in any manner directly or indirectly
11 controlled by an **Insured**;
- 12 7. Judgment, award, verdict, decision or order that
13 includes, as a measure, element or portion of the
14 damages or award set forth therein, any amount the
15 basis of which was determined by reference to the
16 amount of fees, costs, consideration or expenses paid
17 to, awarded to, charged by, or received by an **Insured**;

18 ...

19 3.20 The Miller Policy contains the following Exclusions:

20 SECTION 3 – EXCLUSIONS

21 THIS **POLICY** DOES NOT APPLY TO ANY **CLAIM**
22 ARISING FROM OR IN CONNECTION WITH:

- 23 A. Any dishonest, fraudulent, criminal, malicious, or
24 intentionally harmful **Wrongful Act** committed by, at
the direction of, or with the consent of an **Insured**;
- 25 E. Any **Wrongful Act** that occurred prior to the
Effective Date of this **Policy**, if:

1. The **Wrongful Act** occurred in the course of services or activities performed for a firm other than the **Named Insured**, and there is another policy of professional liability insurance that provides coverage for the **Claim**, regardless of the amount, if any, of the available limits of liability of the other policy, and regardless of whether or not the deductible provisions or limits of liability of the other policy are different from those of this **Policy**;
2. There is an earlier-incepting policy of professional liability insurance that provides coverage for the **Claim**, or would have provided coverage for the **Claim** if the **Insured's** obligations under that policy had been complied with, regardless of the amount, if any, of the available limits of liability of the prior policy, and regardless of whether or not the deductible provisions or limits of liability of the prior policy are different from those of this **Policy**; or
3. Prior to the **Effective Date** of this **Policy**, any **Insured** gave or should have given to any insurer, notice of a **Claim** or potential **Claim** arising from or in connection with the **Wrongful Act**, or from any **Wrongful Act** that is connected temporally, logically or causally, by any common fact, circumstance, situation, transaction, event, advice or decision to the **Claim** or potential **Claim**.

3.21 The Miller Policy contains the following General Conditions:

A. INSURED'S OBLIGATIONS UPON NOTICE OF CLAIM OR POTENTIAL CLAIM

1. When an **Insured** becomes aware of a **Wrongful Act** that could reasonably be expected to be the basis of a **Claim**, but no **Claim** arising therefrom has yet been made, then as a condition precedent to the

Company's obligation to defend or indemnify the **Insured** under this **Policy**, the **Insured** shall immediately give written notice to the **Company**. Such notice shall include the fullest information obtainable concerning the potential **Claim**. The **Insured** must deliver written notice to the **Company** in accordance with the CLAIMS MADE AND REPORTED POLICY paragraph set forth on page 1 of this **Policy**.

3.22 ALPS reserves the right to assert any other exclusions or grounds for which coverage for the claims asserted in the Underlying Complaint may be excluded under the Miller Policy.

3.23 ALPS reserves the right to assert any other policy language or coverage forms of the Miller Policy that may be potentially applicable to this action.

C. The Cameron Sutherland Policy

3.24 The Cameron Sutherland Policy contains the following Insuring Agreement:

SECTION 1 – INSURING AGREEMENTS

A. COVERAGE

Subject to the Limit of Liability, exclusions, conditions and other terms of this Policy, the Company agrees to pay on behalf of the Insured all sums (in excess of the Deductible amount) that the Insured becomes legally obligated to pay as Damages, arising from or in connection with A CLAIM FIRST MADE AGAINST THE INSURED AND FIRST REPORTED IN WRITING TO THE COMPANY DURING THE

1 POLICY PERIOD, provided that all of the following
2 conditions are satisfied:

- 3 1. The Claim arises from a Wrongful Act that occurred
4 on or after the Retroactive Coverage Date set forth in
5 Item 2 of the Declarations;
6
7 2. At the Effective Date of this Policy, no Insured knew
8 or reasonably should have known or foreseen that the
9 Wrongful Act might be the basis of a Claim;
10
11 3. Notice of the Claim or the Wrongful Act was not given
nor required to be given to any other insurer prior to
the Effective Date; and
12
13 4. The Claim is not otherwise covered under any other
insurance policy that the Company has issued to the
Named Insured.

12 3.25 The Cameron Sutherland Policy contains the following Definitions
13 pertinent to the above-described Insuring Agreement:
14

15 **Claim** means a demand for money or services including,
16 but not necessarily limited to, the service of suit or
institution of arbitration or alternative dispute resolution
proceedings against the **Insured**.

17 **Claim** does *not* mean *nor* include any demand, service or
18 proceeding arising from or in connection with any actual
or alleged:
19 ...

- 20 3. Employment-related matter involving an **Insured** as
21 an employer;
...

- 22 7. Notice or written demand arising from or in
23 connection with any disciplinary, investigatory or

1 other proceeding before a state licensing board, peer
2 review committee or governmental regulatory body
involving an **Insured Attorney**;

3 H. **Damages** means any:

- 4 1. Monetary award by way of judgment or final
5 arbitration, or any settlement; and

6 ...

7 **Damages** does *not* mean *nor* include any:

- 8 3. Punitive, multiple, or exemplary damages, fines,
9 sanctions, penalties or citations, including, without
10 limitation, any consequential or incidental damages,
11 attorney's fees or costs, or pre-judgment or post-
12 judgment interest resulting therefrom, regardless
against whom the same are levied or imposed and
regardless of whether the same were levied or imposed
in a separate matter or proceeding;
- 13 4. Awards deemed uninsurable by law;
- 14 5. Injunctive, declaratory, or other equitable relief, or
15 costs or fees incident thereto;
- 16 6. Restitution, reduction, disgorgement or set-off of any
17 fees, costs, consideration or expenses paid to, awarded
to, charged by, or received by an **Insured**, or any other
18 funds or property of any person or entity presently or
19 formerly held or in any manner directly or indirectly
controlled by an **Insured**;
- 20 7. Judgment, award, verdict, decision or order that
21 includes, as a measure, element or portion of the
22 damages or award set forth therein, any amount the
23 basis of which was determined by reference to the

1 amount of fees, costs, consideration or expenses paid
2 to, awarded to, charged by, or received by an **Insured**;

3 ...

4 3.26 The Cameron Sutherland Policy contains the following Exclusions:

5 **THIS POLICY DOES NOT APPLY TO ANY CLAIM**
6 **ARISING FROM OR IN CONNECTION WITH:**

7 A. Any dishonest, fraudulent, criminal, malicious, or
8 intentionally harmful **Wrongful Act** committed by, at
9 the direction of, or with the consent of an **Insured**;

10 E. Any **Wrongful Act** that occurred prior to the
11 **Effective Date** of this **Policy**, if:

12 1. The **Wrongful Act** occurred in the course of services
13 or activities performed for a firm other than the
14 **Named Insured**, and there is another policy of
15 professional liability insurance that provides
16 coverage for the **Claim**, regardless of the amount, if
17 any, of the available limits of liability of the other
18 policy, and regardless of whether or not the
19 deductible provisions or limits of liability of the other
20 policy are different from those of this **Policy**;

21 2. There is an earlier-incepting policy of professional
22 liability insurance that provides coverage for the
23 **Claim**, or would have provided coverage for the
24 **Claim** if the **Insured's** obligations under that policy
had been complied with, regardless of the amount, if
any, of the available limits of liability of the prior
policy, and regardless of whether or not the
deductible provisions or limits of liability of the prior
policy are different from those of this **Policy**; or

3. Prior to the **Effective Date** of this **Policy**, any
Insured gave or should have given to any insurer,

notice of a **Claim** or potential **Claim** arising from or in connection with the **Wrongful Act**, or from any **Wrongful Act** that is connected temporally, logically or causally, by any common fact, circumstance, situation, transaction, event, advice or decision to the **Claim** or potential **Claim**.

3.27 The Cameron Sutherland Policy contains the following General Conditions:

B. INSURED'S OBLIGATIONS UPON NOTICE OF CLAIM OR POTENTIAL CLAIM

1. When an **Insured** becomes aware of a **Wrongful Act** that could reasonably be expected to be the basis of a **Claim**, but no **Claim** arising therefrom has yet been made, then as a condition precedent to the **Company's** obligation to defend or indemnify the **Insured** under this **Policy**, the **Insured** shall immediately give written notice to the **Company**. Such notice shall include the fullest information obtainable concerning the potential **Claim**. The **Insured** must deliver written notice to the **Company** in accordance with the CLAIMS MADE AND REPORTED POLICY paragraph set forth on page 1 of this **Policy**.

3.28 ALPS reserves the right to assert any other exclusions or grounds for which coverage for the claims asserted in the Underlying Complaint may be excluded under the Cameron Sutherland Policy

3.29 ALPS reserves the right to assert any other policy language or coverage forms of the Cameron Sutherland Policy that may be potentially applicable to this action.

IV. CAUSE OF ACTION FOR DECLARATORY RELIEF

4.1 ALPS reasserts paragraphs 1.1 through 3.29 and incorporates the same as though fully set forth herein.

A. No Defense Coverage Or Indemnity Is Owed By ALPS to the Parties Insured Under The Miller Policy

4.2 There is no coverage available under the Miller Policy for the claims asserted by Robinhood against Miller and Miller P.S. in Robinhood's Motion for Attorney's Fees in the Underlying Lawsuit.

4.3 The Insuring Agreement of the Miller Policy sets forth that “Subject to the Limit of Liability, exclusions, conditions and other terms of this Policy, the Company agrees to pay on behalf of the Insured all sums (in excess of the Deductible amount) that the Insured becomes legally obligated to pay as Damages arising from or in connection with A CLAIM...”

4.4 The Miller Policy excludes “Punitive, multiple, or exemplary damages, fines, sanctions, penalties or citations, including, without limitation, any consequential or incidental damages, attorney’s fees or costs, or pre-judgment or post-judgment interest resulting therefrom, regardless against whom the same are levied or imposed and regardless of whether the same were levied or imposed in a separate matter or proceeding” from the definition of “Damages” under the Insuring

1 Agreement.

2 4.5 There is an actual and justiciable controversy as to whether the fees and
3 sanctions requested against Miller and Miller P.S. by the Defendant in its Motion for
4 Attorney's Fees in the Underlying Lawsuit constitute "Punitive, multiple, or
5 exemplary damages, fines, sanctions, penalties or citations, including, without
6 limitation, any consequential or incidental damages, attorney's fees or costs, or pre-
7 judgment or post-judgment interest resulting therefrom" which would resultingly
8 exclude coverage.
9

10 4.6 The Miller Policy requires that any claims for coverage under the
11 Miller Policy be "FIRST MADE AGAINST THE INSURED AND FIRST
12 REPORTED IN WRITING TO THE COMPANY DURING THE POLICY
13 PERIOD..."
14

15 4.7 There is an actual and justiciable controversy as to whether the claims
16 asserted by the Defendant in its Motion for Attorney's Fees in the Underlying
17 Lawsuit were first made against Miller and/or Miller P.S. and were first reported in
18 writing to the ALPS during the Policy Period of June 1, 2021 to June 1, 2022.
19

20 4.8 The Miller Policy excludes from coverage "any dishonest, fraudulent,
21 criminal, malicious, or intentionally harmful Wrongful Act committed by, at the
22 direction of, or with the consent of an Insured".
23

1 4.9 There is an actual and justiciable controversy as to whether the claims
2 asserted by the Defendant in its Motion for Attorney’s Fees in the Underlying
3 Lawsuit constitute allegations of “dishonest, fraudulent, criminal, malicious, or
4 intentionally harmful Wrongful Act(s)” committed by, at the direction of, or with
5 the consent of Miller or Miller P.S., which would resultingly be excluded from
6 coverage.
7

8 4.10 The Miller Policy excludes from coverage “Any Wrongful Act that
9 occurred prior to the Effective Date of this Policy, if:…Prior to the Effective Date
10 of this Policy, any Insured gave or should have given to any insurer, notice of a
11 Claim or potential Claim arising from or in connection with the Wrongful Act, or
12 from any Wrongful Act that is connected temporally, logically or causally, by any
13 common fact, circumstance, situation, transaction, event, advice or decision to the
14 Claim or potential Claim.”
15

16 4.11 There is an actual and justiciable controversy as to whether Miller or
17 Miller P.S., to the extent that the allegations forming the basis of the Defendant’s
18 Motion for Attorney’s Fees in the Underlying Lawsuit occurred prior to the Effective
19 Date of the Miller Policy, gave or ought to have given notice to ALPS of those
20 allegations as forming the basis of a potential future claim against Miller or Miller
21 P.S.
22
23

1 4.12 In addition to the provisions cited above, ALPS pleads all other
 2 conditions, terms, limitations, definitions, and exclusions of the Miller Policy which
 3 may be found to be applicable to ALPS' coverage and defense of the claims against
 4 Miller and Miller P.S. in this matter and ALPS reserves the right to amend its
 5 Complaint for Declaratory Judgment as additional and/or more specific information
 6 becomes apparent.
 7

8 **B. No Defense Coverage Or Indemnity Is Owed By ALPS to the**
 9 **Parties Insured Under The Cameron Sutherland Policy**

10 4.13 There is no coverage available under the Cameron Sutherland Policy
 11 for the claims asserted by Robinhood against Brian Cameron, Shayne Sutherland,
 12 and Cameron Sutherland PLLC in Robinhood's Motion for Attorney's Fees in the
 13 Underlying Lawsuit.
 14

15 4.14 The Insuring Agreement of the Cameron Sutherland Policy sets forth
 16 that "Subject to the Limit of Liability, exclusions, conditions and other terms of this
 17 Policy, the Company agrees to pay on behalf of the Insured all sums (in excess of
 18 the Deductible amount) that the Insured becomes legally obligated to pay as
 19 Damages arising from or in connection with A CLAIM..."
 20

21 4.15 The Cameron Sutherland Policy excludes "Punitive, multiple, or
 22 exemplary damages, fines, sanctions, penalties or citations, including, without
 23

1 limitation, any consequential or incidental damages, attorney’s fees or costs, or pre-
2 judgment or post-judgment interest resulting therefrom, regardless against whom the
3 same are levied or imposed and regardless of whether the same were levied or
4 imposed in a separate matter or proceeding” from the definition of “Damages” under
5 the Insuring Agreement.
6

7 4.16 There is an actual and justiciable controversy as to whether the fees and
8 sanctions requested against Cameron, Sutherland, and Cameron Sutherland by the
9 Defendant in its Motion for Attorney’s Fees in the Underlying Lawsuit constitute
10 “Punitive, multiple, or exemplary damages, fines, sanctions, penalties or citations,
11 including, without limitation, any consequential or incidental damages, attorney’s
12 fees or costs, or pre-judgment or post-judgment interest resulting therefrom” which
13 would resultingly exclude coverage.
14

15 4.17 The Cameron Sutherland Policy requires that any claims for coverage
16 be “FIRST MADE AGAINST THE INSURED AND FIRST REPORTED IN
17 WRITING TO THE COMPANY DURING THE POLICY PERIOD...”
18

19 4.18 There is an actual and justiciable controversy as to whether the claims
20 asserted by the Defendant in its Motion for Attorney’s Fees in the Underlying
21 Lawsuit were first made against Cameron, Sutherland and/or Cameron Sutherland
22 PLLC and were first reported in writing to the ALPS during the Policy Period of
23

1 August 30, 2020 to August 30, 2021.

2 4.19 The Cameron Sutherland Policy excludes from coverage “any
3 dishonest, fraudulent, criminal, malicious, or intentionally harmful Wrongful Act
4 committed by, at the direction of, or with the consent of an Insured”.

5 4.20 There is an actual and justiciable controversy as to whether the claims
6 asserted by the Defendant in its Motion for Attorney’s Fees in the Underlying
7 Lawsuit constitute allegations of “dishonest, fraudulent, criminal, malicious, or
8 intentionally harmful Wrongful Act(s)” committed by, at the direction of, or with
9 the consent of Cameron, Sutherland, or Cameron Sutherland PLLC, which would
10 resultingly be excluded from coverage.
11

12 4.21 The Cameron Sutherland Policy excludes from coverage “Any
13 Wrongful Act that occurred prior to the Effective Date of this Policy, if:...Prior to
14 the Effective Date of this Policy, any Insured gave or should have given to any
15 insurer, notice of a Claim or potential Claim arising from or in connection with the
16 Wrongful Act, or from any Wrongful Act that is connected temporally, logically or
17 causally, by any common fact, circumstance, situation, transaction, event, advice or
18 decision to the Claim or potential Claim.”
19
20

21 4.22 There is an actual and justiciable controversy as to whether Cameron,
22 Sutherland, or Cameron Sutherland PLLC, to the extent that the allegations forming
23

1 the basis of the Defendant's Motion for Attorney's Fees in the Underlying Lawsuit
2 occurred prior to the Effective Date of the Cameron Sutherland Policy, gave or ought
3 to have given notice to ALPS of those allegations as forming the basis of a potential
4 future claim against Cameron, Sutherland, or Cameron Sutherland PLLC or Miller
5 P.S.
6

7 4.23 In addition to the provisions cited above, ALPS pleads all other
8 conditions, terms, limitations, definitions, and exclusions of the Cameron Sutherland
9 Policy which may be found to be applicable to ALPS' coverage and defense of the
10 claims against Cameron, Sutherland, and Cameron Sutherland in this matter and
11 ALPS reserves the right to amend its Complaint for Declaratory Judgment as
12 additional and/or more specific information becomes apparent.
13

14 **V. FIRST CAUSE OF ACTION -DECLARATORY RELIEF**

15 5.1 ALPS is entitled to declaratory relief in its favor, specifically including
16 a judicial determination as to its defense and indemnity obligations to Kirk Miller
17 and Kirk D. Miller P.S. under the Miller Policy, and as to its defense and indemnity
18 obligations to Brian Cameron, Shayne Sutherland, and Cameron Sutherland PLLC
19 under the Cameron Sutherland Policy.
20

21 **VI. PRAYER FOR RELIEF**

22 ALPS, having alleged the foregoing, does now hereby pray for relief as
23

1 follows:

2 1. For a declaration that ALPS owes no defense obligation to Kirk Miller
3 for any claims asserted against him in the Complaint arising from the subject loss.

4 2. For a declaration that ALPS owes no indemnity obligation to Kirk
5 Miller for any claims asserted against him in the Complaint arising from the subject
6 loss.

7 3. For a declaration that ALPS owes no defense obligation to Kirk D.
8 Miller, P.S. for any claims asserted against it in the Complaint arising from the
9 subject loss.
10

11 4. For a declaration that ALPS owes no indemnity obligation to Kirk D.
12 Miller, P.S. for any claims asserted against it in the Complaint arising from the
13 subject loss.
14

15 5. For a declaration that ALPS owes no defense obligation to Brian
16 Cameron for any claims asserted against him in the Complaint arising from the
17 subject loss.

18 6. For a declaration that ALPS owes no indemnity obligation to Brian
19 Cameron for any claims asserted against him in the Complaint arising from the
20 subject loss.
21

22 7. For a declaration that ALPS owes no defense obligation to Shayne
23

1 Sutherland for any claims asserted against him in the Complaint arising from the
2 subject loss.

3 8. For a declaration that ALPS owes no indemnity obligation to Shayne
4 Sutherland for any claims asserted against him in the Complaint arising from the
5 subject loss.
6

7 9. For a declaration that ALPS owes no defense obligation to Cameron
8 Sutherland PLLC for any claims asserted against it in the Complaint arising from
9 the subject loss.

10 10. For a declaration that ALPS owes no indemnity obligation to Cameron
11 Sutherland PLLC for any claims asserted against it in the Complaint arising from
12 the subject loss.
13

14 11. For a declaration that the Defendants are bound by any judicial
15 declarations in this matter involving the Miller Policy and the Cameron Sutherland
16 Policy.

17 12. For all interest allowed by law.

18 13. For all attorney fees and costs allowed by statute and law.

19 14. For all other and further relief as this honorable Court deems equitable.
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23

1 DATED this 7th day of April 2022.

2 LETHER LAW GROUP

3
4 s/ Thomas Lether

Thomas Lether, WSBA #18089

5 s/ Eric J. Neal

Eric J. Neal, WSBA # 31863

6 1848 Westlake Ave N., Suite 100

7 Seattle, WA 98109

P: 206-467-5444 F: 206-467-5544

8 tlether@letherlaw.com

eneal@letherlaw.com

9 *Attorneys for ALPS Property & Casualty*
10 *Insurance Company*